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IN THE

Supreme Court of the United States

October Term, 1966.

No. 398

NAVIOS CORPORATION, UNIVERSE TANKSHIPS, INC.,
Petitioners,

v.

NATIONAL MARITIME UNION OF AMERICA, SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291, INTERNATIONAL MARITIME WORKERS' UNION, STEVE CARDULLO, RICHARD ASKEW, LOUIS PARISE and SHANNON J. WALL,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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NATIONAL MARITIME UNION OF AMERICA,
an unincorporated association,
SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA,
an unincorporated association,
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,
an unincorporated association,
INTERNATIONAL MARITIME WORKERS' UNION,
an unincorporated association,
STEVE CARDULLO, individually and as an officer and member representative of all the members of Seafarers' International Union of North America,
RICHARD ASKEW, individually and as an officer and member representative of all the members of International Longshoremen's Association, Local 1291,
LOUIS PARISE, individually and as an officer and member representative of all the members of International Maritime Workers' Union,
LOUIS PARISE, individually and as an officer and member representative of all the members of National Maritime Union of America,

and

SHANNON J. WALL, individually and as an officer and member representative of all the members of International Maritime Workers' Union.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above entitled case on May 2, 1966. Inasmuch as the cases for both petitioners involve identical questions, a single petition is filed as permitted by Rule 23(5).

CITATIONS TO OPINIONS BELOW.

The Opinion of the United States Court of Appeals for the Third Circuit dated and filed May 2, 1966, printed in Appendix A hereto, *infra*, page 33, is reported at 359 F. 2d 853. The Opinion of the United States District Court for the Eastern District of Pennsylvania, dated and filed December 16, 1964, printed in Appendix B hereto, *infra*, page 34, is reported at 236 F. Supp. 657.

JURISDICTION.

The judgment of the United States Court of Appeals for the Third Circuit was dated and entered on May 2, 1966. Jurisdiction to review the judgment in question is conferred on this Court by Section 1254(1) of the Judicial Code of 1948, 63 Stat. 928, 28 U. S. C. 1254(1).

QUESTIONS PRESENTED FOR REVIEW.

1. Where American unions in an American port conducted secondary boycott activities which intentionally disrupted business relationships between the owner and charterer of a foreign flag vessel and American employers, as well as among such American employers themselves, in violation of Section 8(b)(4) of the National Labor Rela-

tions Act, does not Section 303(b) of that Act (which grants the right to sue for damages resulting from union secondary boycott activity to "whoever shall be injured" thereby) confer upon the district courts of the United States jurisdiction to entertain actions by the owner and charterer of such vessel seeking recovery of damages resulting from such illegal activities?

2. Did not the United States Court of Appeals for the Third Circuit err in affirming the District Court's refusal to entertain such actions on the ground that it lacked jurisdiction by reason of the decisions of this Court in *Benz v. Compania Naviera Hidalgo*, 353 U. S. 138, 1 L. ed. 2d 709 (1957), *Incres Steamship Co. Ltd. v. International Maritime Workers Union*, 372 U. S. 24, 9 L. ed. 2d 557 (1963) and *McCulloch v. Sociedad Nacional*, 372 U. S. 10, 9 L. ed. 2d 547 (1963)?

STATUTORY PROVISIONS INVOLVED.

The following constitutional and statutory provisions are involved herein:

1. United States Constitution, Article I, § 8, clause 3, printed in Appendix C, *infra*, page 44.

2. National Labor Relations Act, Section 2(6), 61 Stat. 137, 29 U. S. C. § 152(6), printed in Appendix C, *infra*, page 44.

3. National Labor Relations Act, Section 2(7), 61 Stat. 137, 29 U. S. C. § 152(7), printed in Appendix C, *infra*, page 44.

4. National Labor Relations Act, Section 8(b)(4), 73 Stat. 525, 29 U. S. C. § 158, printed in Appendix C, *infra*, page 44.

5. Labor Management Relations Act, Section 303, 73 Stat. 545, 29 U. S. C. § 187, printed in Appendix C, *infra*, page 46.

STATEMENT OF THE CASE.[1]

These consolidated appeals from the United States Court of Appeals for the Third Circuit seek reversal of its affirmance of the District Court's judgment of dismissal for lack of jurisdiction over the subject matter. The dismissals appealed from involved petitioners' civil actions for damages brought under Section 303 of the Labor Management Relations Act of 1947, as amended, 73 Stat. 545, 29 U. S. C. § 187.

Because the dismissals were granted upon preliminary motions of the appellees for summary judgment which were treated by the court below as motions to dismiss (139a), the facts alleged by the petitioners must be deemed admitted for purposes of considering these appeals.[2] The facts, as thus conceded by respondents, are as follows:

Navios Corporation (hereinafter referred to as "Navios"), one of the plaintiffs below and a petitioner herein, is a Liberian corporation maintaining a place of business in Nassau, Bahama Islands (9a, 64a, 80a), the stock of which is wholly owned by an American corporation (66a, 67a, 83a). At the time of the events giving rise to its claim, Navios was the time charterer of the SS ORE MONARCH, a Liberian ocean-going ore carrier employing alien seamen, owned and operated by Universe Tankships, Inc. (hereinafter known as "Universe"), the other petitioner herein (11a, 24a, 48a-49a, 116a-128a). Universe is also a Liberian corporation and maintains its place of business in Bermuda (22a, 48a, 108a-109a, 122a). Its stock

1. Page references herein are to the Appendix filed in the Court of Appeals as certified and filed contemporaneously herewith.

2. *Guessfeldt v. McGrath*, 342 U. S. 308, 310, 96 L. ed. 342, 346 (1952). Respondents' motions are based on facts asserted in petitioners' Pre-trial Memorandum and answers to respondents' interrogatories (137a, 138a), and the District Court apparently took cognizance of facts contained in the Pre-trial Memorandum in writing its opinion. Thus petitioners will draw liberally from the Memorandum and answers to Interrogatories, in addition to the Complaints, in their Statement of the Case.

is wholly owned by a Panamanian corporation, the stock of which is, in turn, owned by American citizens (110a, 111a, 124a).

Registration of vessels beneficially owned by American citizens under the Liberian, Honduran or Panamanian flags (known as PanLibHon vessels) and operation of such vessels by foreign crews, as in the case of the SS ORE MONARCH, is in conformity with the United States governmental policy which seeks to encourage American owners so to register such ships under arrangements calling for the use of such vessels in the national defense effort when conditions may so require (47a, 116a-117a, 129a and see Appendices D & E hereto, *infra*, pp. 48 to 56). Until assigned by the United States to its defense work, such vessels may operate without the need for the costly governmental subsidies required for operation of ships under United States registry with American crews employed at wage rates prevailing in this country (47a).

Prior to October 21, 1960, National Maritime Union of America (hereinafter referred to as "NMU") and Seafarers' International Union of North America (hereinafter referred to as "SIU"), both defendants below and respondents herein, made known their joint opposition to such governmental policy, and in fact effectuated boycotts of foreign flag vessels in 1958, intending that vessels so boycotted be denied necessary port services through the cooperation of waterfront unions (47a, 48a). The NMU and SIU solicited and obtained the support of the International Longshoremen's Association (hereinafter referred to as "ILA"), Local 1291 of which is also a respondent herein, in its opposition to such foreign flag operations, and jointly formed the International Maritime Workers Union (hereinafter referred to as "IMWU") better to organize and direct such opposition (48a). IMWU, another respondent herein, made known that it expected the support of ILA and other waterfront and harbor craft employees' unions in its efforts, and determined to boycott PanLibHon ships (48a, 52a-53a).

At some time shortly before the activities herein complained of, Shannon J. Wall, executive director of IMWU, and Louis Parise, an officer of both NMU and IMWU, met with Richard Askew, president of Local 1291, ILA, to discuss plans for and other matters concerned with its proposed boycott (50a-51a). Askew, Parise and Wall were named as defendants below, as was Steve Cardullo, an officer of SIU (10a-11a, 23a-24a).

On October 21, 1960, the SS ORE MONARCH arrived at the Port of Philadelphia from Venezuela laden with iron ore intended for the Morrisville, Pennsylvania, plant of United States Steel Corporation (11a, 24a-25a, 49a). It was the intent of the petitioners, in accordance with their customary practice, to lighten the vessel by unloading part of its cargo at Pier 122 South, operated by Pennsylvania Tidewater Dock Company (hereinafter referred to as "Tidewater"), so as to decrease the vessel's draft to permit passage up the Delaware River to United States Steel Corporation's Fairless Works (49a). By prearrangement through Norton, Lilley Co., Inc. the vessel was to be docked for lightening and later undocked by tugs of Curtis Bay Towing Company of Pennsylvania (hereinafter referred to as "Curtis Bay") and P. F. Martin, Inc. (hereinafter referred to as "Martin") (9a, 25a, 34a, 40a, 49a). Employees of Curtis Bay and Martin are represented by locals of Inland Boatmen's Union, an affiliate of SIU (49a). Hatchmen and signalmen employed by Tidewater, and represented by Local 1291, ILA, were to unload the vessel in conjunction with cranemen, also Tidewater employees who, though not ILA members, by agreement do not work when ILA cranemen and signalmen do not work (49a).

Men bearing picket signs were stationed by IMWU at the boundary of the Tidewater pier and a picket boat stood by near the end of the pier until the SS ORE MONARCH was docked by Martin tugs (49a-50a). Thereupon, the pickets began a program of deliberate interference with delivery of supplies to the vessel and the picket boat prominently

stationed itself so as to prevent Martin and Curtis Bay tugs from undocking the SS ORE MONARCH (51a).

In furtherance of the deliberate plan to immobilize the petitioners' vessel, on the evening of October 21, 1960, Richard Askew, in company with two other ILA representatives and an agent of NMU entered upon Tidewater property and boarded the SS ORE MONARCH to order off the job four Tidewater employees, members of Local 1291, ILA who with the aid of Tidewater cranemen had begun unloading the vessel in accordance with the business arrangement between Navios and Tidewater through Norton, Lilley Co., Inc. The Tidewater employees immediately left the ship and thus the work ceased at the direct behest of Askew and other of the respondents (51a, 53a).

The SS ORE MONARCH remained completely immobilized by reason of the respondents' activities until February 11, 1961 when she was unloaded and undocked[3] (52a). These illegal boycott activities during such period prevented other Universe and Navios vessels from using the facilities of the Port of Philadelphia, and diversion of these vessels to other ports, at great cost, was required (52a, 53a, 60a, 64a, 79a, 108a, 122a).

The necessary and intended object and result of the respondents' boycott activities was interference in the normal business and contractual relationships between the SS ORE MONARCH (and other foreign flag vessels) and Tidewater, Norton, Lilley Co., Inc., the shipping agent for the petitioners, the tug companies, customers, suppliers and others, as well as among the American employers themselves, of such nature as completely to disrupt such relationships (51a-53a).

The petitioners, as well as Martin and Curtis Bay, filed complaints in the District Court on June 16, 1961, alleging damages and demanding judgment against the respondents

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3. The removal of the pickets followed injunctive proceedings instituted by the National Labor Relations Board (52a).

on the basis of the remedy afforded by Section 303 of the Labor Management Relations Act (8a, 21a, 34a, 40a). That section provides in pertinent part as follows:

> "(a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in Section 8(b)(4) of the National Labor Relations Act, as amended.[4]
>
> (b) Whoever shall be injured in his business or property by any violation of subsection (a) may sue therefor in any district court of the United States . . . and shall recover the damages by him sustained and the cost of the suit."

Suits grounded on Section 303 were also brought by Tidewater,[5] and by Pennsylvania Railroad Company[6] which owned the unloading facilities operated by Tidewater and claimed loss of revenues which it would have received for shipment of the cargo but for the defendants' activities. All six actions were consolidated for trial in the court below (46a). The damages alleged to have resulted from respondents' illegal conduct exceed three quarters of a million dollars. This is entirely without regard to the substantial disruption of activities in the Port of Philadelphia during the four-month period that the ORE MONARCH was immobilized, involving as it did loss of business and income to American employers and their employees which would normally have accrued from the servicing of petitioners' vessels, as well as the diversion of a substantial number of petitioners' vessels to other ports (52a, 53a, 40a, 79a, 108a, 122a).

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4. Section 8(b)(4) prohibits secondary boycotts. It is set forth in full text in Appendix C hereto at page 44.

5. Docketed in the District Court as Civil Action No. 29762.

6. Docketed in the District Court as Civil Action No. 29761.

Defendants NMU, Local 1291, ILA, IMWU, Richard Askew, Louis Parise and Shannon Wall filed motions in the District Court for summary judgment against petitioners in all the consolidated actions (137a, 138a, 139a), and respondents SIU and Steve Cardullo moved the District Court for summary judgment against Martin and Curtis Bay.[7] The matter came on for hearing and argument on December 3, 1964 before the Honorable Harold K. Wood, D. J. Judge Wood, on December 16, 1964 entered an Order which *inter alia* allowed Martin, Curtis Bay, Tidewater and Pennsylvania Railroad Company to maintain their causes of action but dismissed the complaints of Navios and Universe for want of jurisdiction under Section 303 of the Act (147a and Appendix B, hereto, *infra* at page 34). That order, as later amended (149a), resulted in the judgment of dismissal (150a) affirmed by the Court of Appeals (Appendix A hereto, *infra*, page 33).

STATEMENT PURSUANT TO RULE 23(g).

The basis for federal jurisdiction in the United States District Court for the Eastern District of Pennsylvania was set forth in the preamble to the Complaint filed by Navios in the following language:

> "This action arises under § 303(b) of the Labor Management Relations Act, 1947, as amended by Public Law 86-257, Title VII, § 704(e), 73 Stat. 545, 29 U. S. C. § 187."

Substantially identical language was contained in the preamble to the Complaint filed by Universe. Section 303(b) of the Act confers jurisdiction of suits arising thereunder upon the district courts of the United States.

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7. The motions of SIU and Cardullo did not challenge the availability of Section 303 and those defendants conceded in their Brief to the District Court in support of their motions that Section 303 actions were maintainable by all the plaintiffs, including petitioners Navios and Universe.

REASONS FOR GRANTING THE WRIT.

Stated summarily, the reasons for granting the writ are as follows:

1. The decision of the United States Court of Appeals for the Third Circuit involves an important question of federal law, affecting a substantial segment of this country's foreign commerce, and involving grave consequences to the conduct by the United States of its policies in the fields of national defense and international relations; a question which should be finally settled by this Court, i.e., whether Section 303(b) of the Labor Management Relations Act, 1947, as amended, 73 Stat. 545, 29 U. S. C. § 187, confers upon the District Courts of the United States jurisdiction to entertain actions by the owners of foreign flag vessels seeking damages for illegal secondary boycott activities by American labor unions where American employers are also involved.

2. The decision of the United States Court of Appeals for the Third Circuit misconstrues and misapplies the decisions of this Court in *Benz v. Compania Naviera Hidalgo,* 353 U. S. 138, 1 L. ed. 2d 709 (1957), *Incres Steamship Co. Ltd. v. International Maritime Workers Union,* 372 U. S. 24, 9 L. ed. 2d 557 (1963) and *McCulloch v. Sociedad Nacional,* 372 U. S. 10, 9 L. ed. 2d 547 (1963) and conflicts with the decisions of this court in *I. B. T. v. New York, New Haven & Hartford R. R. Co.,* 350 U. S. 155, 100 L. ed. 166 (1956) and *Plumbers' Union v. Door County,* 359 U. S. 354, 3 L. ed. 2d 872 (1959).

3. The decision of the United States Court of Appeals for the Third Circuit is in conflict with the decision of the United States Court of Appeals for the Seventh Circuit in *Madden v. Longshoremen,* 334 F. 2d 1014 (1964) cert. den. 379 U. S. 967, 13 L. ed. 2d 560 (1965), and that of the United States Court of Appeals for the Fourth Circuit in *NLRB v. I. L. A.,* 332 F. 2d 992 (1964).

4. The decision of the United States Court of Appeals for the Third Circuit denying to the owners of foreign flag vessels who have been injured by illegal secondary boycott activity of American unions in an American port the right to recover damages under Section 303 of the Act not only conflicts with the express language of the Act as well with its purpose, but also contravenes and impedes vital national defense and foreign relations policies which seek to further and promote the existence and maintenance of foreign flag vessels subject to effective American control in time of national emergency, and will inevitably have significantly harmful effects upon a substantial segment of the foreign commerce of the United States.

A detailed discussion of the reasons for granting the writ follows.

1. **The Decision of the United States Court of Appeals for the Third Circuit Involves An Important Question of Federal Law Affecting a Substantial Segment of This Country's Foreign Commerce, and Involving Grave Consequences to the Conduct by the United States of Its Policies in the Fields of National Defense and International Relations; a Question Which Should Be Finally Settled by This Court, i.e., Whether Section 303(b) of the Labor Management Relations Act, 1947, as Amended, 73 Stat. 545, 29 U. S. C. § 187, Confers Upon the District Courts of the United States Jurisdiction to Entertain Actions by the Owners of Foreign Flag Vessels Seeking Damages for Illegal Secondary Boycott Activities by American Labor Unions Where American Employers Are Also Involved.**

As we shall show, *infra*, Point 2, there are several recent decisions of this Court involving both foreign flag vessels and such other employing entities as railroads and political subdivisions which, while recognizing that the *regulatory* features of the Act do not apply to such entities, nevertheless clearly support the proposition that the United

States District Courts *do* have jurisdiction of a Section 303 action brought by the owner and charterer of a foreign flag vessel who *have been injured* by an illegal secondary boycott.

Nonetheless, the United States Court of Appeals for the Third, Fourth and Seventh Circuits are in sharp and diametrically opposed conflict on this very issue (see Point 3, *infra*), and the very existence of such conflict appears to stem in large measure from the fact that this Court has not, until now, had an opportunity to make an express clarification of its position on the issue here involved.[8]

The importance of the issue here presented is graphically highlighted by the fact that the vessels here involved, and others registered under the flags of Panama, Liberia and Honduras, are vital to the national defense because of arrangements making them available to the United States government in time of national emergency (see p. 5, *supra* and 47a). As of the fall of 1960, at the same time as the activities out of which the present litigation arose, approximately 45% of the active privately owned merchant shipping available to the United States for use in time of national emergency was registered under the flags of Liberia, Panama and Honduras. These vessels have been referred to as being under "effective United States control", or as "EUSC" vessels: See letter addressed to the Attorney General by the Secretary of Defense dated October 26, 1960, printed as Appendix D hereto, *infra*, page 48, and Extension of Remarks of Hon. Carl Vinson, Con-

8. The only discussion by this Court of the specific issue here presented appears to be in the dissenting opinion by Mr. Justice Douglas in *Benz v. Compania Naviera Hidalgo*, 353 U. S. 138, 1 L. ed. 2d 709 (1957), in which the following language appears (353 U. S. at page 148, 1 L. ed. 2d at page 716):

> "But, even if we assume arguendo that the foreign vessel would not be subject to the *regulatory* provisions of the Act, it could nonetheless sue under § 303(b) to get protection from any unfair labor practice condemned by the Act. That is indeed the force of our ruling in Local Union No. 25 etc. v. New York, N. H. & H. RR. Co., 350 U. S. 155, 160, 161, 100 L. ed. 166, 171, 172, 76 S. Ct. 227." (Emphasis supplied.)

gressional Record—Appendix, pages A6713-A6714, printed as Appendix E, hereto, *infra*, pages 52-56. See also Point 4, *infra*, commencing at page 25, for a more extended discussion of this aspect of the matter.

In 1960, 353 "EUSC" vessels touched at United States ports a total of 3,155 times. Of the total number of inbound sailings, there were 1,420 by dry cargo vessels such as the SS ORE MONARCH. These vessels carried 63.6 million long tons of cargo, which constituted 23.3% of all oceanborne foreign trade of the United States in that year. Of that total 59.6 million long tons constituted imports of vital materials, such as petroleum products, iron ore, bauxite, sugar and other mineral and agricultural products. This was 33.6% of all products imported into the United States by sea.[9] This is a most significant and important segment of the foreign commerce of the United States.

Moreover, the respondents have made it clear, not only by their past activities against the vessels of petitioners and other owners of foreign flag vessels but also by their declarations of intent (R. 47a-48a, 58a), that the illegal boycotts were part of a continuing program of harassment against such vessels, which may confidently be expected to be resumed should the decision of which review is sought be permitted to stand.

As a consequence, the issue in these cases is not limited to the parties alone, but of a certainty will have pronounced adverse effects on the foreign commerce of the United States and on the administration of its policies in the fields of national defense and international relations. Moreover, it is abundantly clear that the illegal activities here complained of are not merely academic or episodic, but bid fair to be resumed and continued in the future. For all of these special and important reasons, therefore, this Court is urged to review the decision appealed from and, by granting certiorari as here requested, finally to settle whether the

9. "Changing Patterns in U. S. Trade and Shipping Capacity", U. S. Department of Commerce, Maritime Administration, December, 1964.

remedy afforded by Section 303(b) of the Act is available to the owners of foreign flag vessels to reimburse them for the substantial losses they have already sustained from the illegal activities of the respondents here involved, as well as to act as a deterrent to the resumption thereof.

2. The Decision of the United States Court of Appeals for the Third Circuit Misconstrues and Misapplies the Decisions of This Court in Benz v. Compania Naviera Hidalgo, 353 U. S. 138, 1 L. ed. 2d 709 (1957); Incres Steamship Co. Ltd. v. International Maritime Workers Union, 372 U. S. 24, 9 L. ed. 2d 557 (1963) and McCulloch v. Sociedad Nacional, 372 U. S. 10, 9 L. ed. 2d 547 (1963) and Conflicts With the Decisions of This Court in I. B. T. v. New York, New Haven & Hartford R. R. Co., 350 U. S. 155, 100 L. ed. 166 (1956) and Plumbers' Union v. Door County, 359 U. S. 354, 3 L. ed. 2d 872 (1959).

The Court of Appeals, in its per curiam opinion, affirms the action of the District Court in grounding its dismissal of petitioners' Section 303(b) causes of action upon *Benz v. Compania Naviera Hidalgo,* 353 U. S. 138, 1 L. ed. 2d 709 (1957). See Appendices A and B hereto, *infra,* printed at pages 33 and 34, respectively. But both the facts and the law of that case are at variance with the question confronting the Court here. The issue in *Benz* was simply whether the National Labor Relations Act had pre-empted the field so as to bar an action requesting an injunction and damages in a federal court under applicable state law. There, the foreign crew of a foreign vessel struck in an American port in contravention of contracts between the crew and owners. Sympathetic American unions helped support the crew's demands by picketing the vessel. This picketing constituted *primary* picketing and did not involve the secondary boycott situation found in the present cases. The plaintiff brought an action under Oregon law for an

injunction growing out of the intervention by American unions in a dispute existing solely between a foreign employer and a foreign crew. This Court permitted the state law remedy to stand against the defendants' contention that the N. L. R. A. had occupied the field, and stated:

> "Our study of the Act [the Labor Management Relations Act amendments to the N. L. R. A.] leaves us convinced that Congress did not fashion it to resolve labor disputes between nationals of other countries operating ships under foreign laws." 353 U. S. 138, 143, 1 L. ed. 2d 709, 713.

It would appear quite clear from the opinion that in *Benz* this Court was deciding only whether a federal statutory remedy was exclusive—so as to preclude application of the state law remedy being appealed from—where the dispute was between foreign nationals. That this Court regarded that internal dispute as central to its holding was made manifest in the opinion in *Marine Cooks & Stewards v. Panama Steamship Company*, 362 U. S. 365, 4 L. ed. 2d 797 (1960), wherein it distinguished *Benz* in upholding the application of the Norris-LaGuardia Act to picketing of a foreign vessel by saying:

> "Unlike the situation in the Benz case, in which American unions to which the foreign seamen did not belong picketed the foreign ship in sympathy with the strike of the foreign seamen aboard, the union members here were not interested in the internal economy of the ship, but rather were interested in preserving job opportunities for themselves in this country. They were picketing on their own behalf, not on behalf of the foreign employees as in Benz. Though the employer here was foreign, the dispute was domestic." 362 U. S. 365, 371, 4 L. ed. 2d 802 (fn. 12).

This Court in *Marine Cooks* clarified the scope of its *Benz* decision in a manner which lucidly demonstrates its inapplicability to the petitioners. It pointed out that the issue confronting it in *Benz*

> "was whether the Labor Management Relations Act of 1947 governed *the internal labor relations* of a foreign ship and its foreign workers under contracts made abroad while that ship happened temporarily to be in American waters. The Benz case decided that the Labor Management Relations Act had no such scope or coverage and that it accordingly did not pre-empt the labor relations field so as to bar an action for damage for unlawful picketing under Oregon law." 362 U. S. 365, 369, 4 L. ed. 2d 797, 801. (Emphasis supplied.)

Furthermore, the majority of the *Benz* court gave no consideration whatever to the application of Section 303 to the dispute there involved.

It is thus manifest that *Benz* is entirely distinguishable from the instant case and that, accordingly, it was error to base dismissal of petitioners' actions upon the authority of that case.[10]

The District Court and the Court of Appeals also refer to *McCulloch v. Sociedad Nacional*, 372 U. S. 10, 9 L. ed. 2d 547 (1963), and *Incres Steamship Co., Ltd. v. International Maritime Workers Union*, 372 U. S. 24, 9 L. ed. 2d 557 (1963), companion cases which relied upon *Benz*.

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10. The Pennsylvania Supreme Court distinguished *Benz* from the instant case and held, in an appeal from these same petitioners' action for an injunction in Common Pleas Court No. 1 of Philadelphia County, that no injunction could issue inasmuch as the matter was arguably within the jurisdiction of the National Labor Relations Board. *Navios, et al. v. NMU, et al.*, 402 Pa. 325, 166 A. 2d 625 (1960), cert. den. 366 U. S. 905, 6 L. ed. 2d 204 (1961).

These same respondents conceded in their brief to this Court in opposition to petitioners' request for certiorari at that time (Nos. 804 and 805, October Term, 1960), that the Act *did* apply in this situation, and thus that the N. L. R. B. had jurisdiction to seek an injunction. As the respondents there stated (pages 12-13) "Certainly, *Benz* is inapposite authority in a flag of convenience picketing case which does not have a similar link with internal shipboard relations."

Both cases are clearly distinguishable from the instant matter. *Sociedad* involved the question of whether the National Labor Relations Board had jurisdiction to process a petition for an election aboard a foreign flag vessel, and *Incres* was concerned with the Board's jurisdiction over unfair labor practices limited to the organization of alien seamen aboard a foreign vessel. Here again, this Court was concerned exclusively with the regulation of internal labor relations of foreign vessels, and the Section 303 remedy afforded by the N. L. R. A. (for damages sustained as a result of an unlawful secondary boycott) was not under consideration. As in *Benz,* the disputes in *Incres* and *Sociedad* were internal. They existed between foreign crews and foreign owners. Thus neither case supports dismissal of petitioners' Section 303 actions. *Incres* and *Sociedad,* concerned only with Board jurisdiction over internal employer-employee relations, involved only *primary* picketing, and did not involve violation of the secondary boycott prohibition of Section 8(b)(4) of the National Labor Relations Act, as amended, 73 Stat. 525, 542-545, 29 U. S. C. § 158. Moreover, there was absent any element of such effect on the domestic economy as is concomitant in disruption of business relationships with and between American employers. Thus, those decisions do not prevent the Board from exercising its injunctive powers to end such illegal activity. Indeed, the application of the *Incres* holding to bar an N. L. R. B. injunction against American unions seeking, in violation of Section 8(b)(4) of the Act, to prevent the unloading of a foreign flag vessel, precisely the same situation confronting this Court, was specifically rejected by the Seventh Circuit in *Madden v. Longshoremen,* 334 F. 2d 1014, 1018 (7th Cir. 1964), cert. den. 379 U. S. 967, 13 L. ed. 2d 560 (1965), and *NLRB v. I. L. A.,* 332 F. 2d 992 (1964), discussed in Point 3, *infra* at pages 21-25.

Thus, it is established that neither unions nor foreign owners may seek the aid of the Labor Board to resolve

internal labor disputes between alien crews and foreign owners in American ports inasmuch as injection of the Board's machinery in such disputes may constitute an interference with the sovereignty of other States. *Sociedad*, 372 U. S. 10, 21, 9 L. ed. 2d 547, 555. But where the statutory machinery is used to curb illegal secondary boycott activity affecting domestic interests, even though a foreign vessel may be involved, there can be no question of interference in the sovereignty of foreign States. *Madden v. Longshoremen, supra.*

Although the Labor Board would not have jurisdiction over the internal employer-employee relations of the appellants, the holding of *Incres* does not bar the appellants from pursuing private remedies under Section 303, which provides relief from illegal conduct of third parties "in an industry . . . *affecting commerce*".

The term "affecting commerce" is defined in Section 2(7) of the National Labor Relations Act as follows:

> "(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." 61 Stat. 137, 29 U. S. C. § 162(7).

As will readily be observed, that term has far wider latitude and reaches many more activities than does "commerce" which is defined by Section 2(6) of the Labor Act as follows:

> "(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States . . . or between any foreign country and any state. . . ." 61 Stat. 137, 29 U. S. C. § 162(6).

Indeed, the Court in *Incres* pointedly restricted its limited discussion of "commerce" to the inapplicability of

Section 2(6) to the internal labor relations of foreign vessels, and did not consider Section 2(7) at all. And, as we have seen, the remedy afforded by Section 303 is not limited to Section 2(6), but is conferred upon "whoever" may be damaged by the illegal activity therein proscribed "in an industry . . . affecting commerce".

Where the term "affecting commerce" is used, the law is clear that Congress intended to reach the fullest extent of its powers under the commerce clause, U. S. C. Const. art. I, § 8, cl. 3. *Cone Bros. Contracting Co. v. Bricklayers, Masons, Plasterers, Marble Masons, Tile Layers, Terrazzo Workers & Cement Finishers Union No. 3*, 263 F. 2d 297 (5th Cir. 1959), cert. den. 360 U. S. 904, 3 L. ed. 2d 1255 (1959); *NLRB v. Suburban Lumber Co.*, 121 F. 2d 829 (3rd Cir. 1941), cert. den. 314 U. S. 693, 86 L. ed. 555 (1941).

For the purposes of the case at bar, therefore, the test is: did the respondents' illegal conduct take place in "an industry or activity affecting commerce"? That the current dispute is in "an industry or activity affecting commerce" is unquestioned, as the District Court necessarily concluded when it found that the towboat companies, the railroad and the dock company were entitled to exercise the remedy conferred by Section 303(b) of the Act as a consequence of the defendants' concededly illegal activities (142a-143a).

It is clear that Section 303 provides a remedy for violation of Section 8(b)(4) entirely independent of that afforded by Section 10 of the Act. *Local 290, IBT v. I. E. Schilling, Inc.*, 340 F. 2d 286, 289 (5th Cir. 1965); *Long v. Emery*, 228 F. Supp. 368 (D. Kans. 1964). Furthermore, the use of the language "for the purpose of this section only" permits of no inference other than that this section is self-sustaining and that Congress intended to create a private damage remedy in addition to the injunctive remedy provided in case of a violation of Section 8(b)(4).

In fine, therefore, all the cases relied upon by the lower courts involved situations in which the Labor Board ma-

chinery was sought to be invoked in disputes involving the internal labor relations of foreign flag vessels. In *Incres* and *Benz,* the union contended for Board jurisdiction to the exclusion of state common law remedy then available; in *Sociedad,* the Board attempted to conduct a representation election. In no case considered by the lower courts was the issue of the availability of Section 303 to foreign vessel owners at issue, much less squarely met. But the distinction between the cases considered by the court below and the instant case is epitomized by the difference between an alien being involuntarily subjected to interference in his relations with his own employees by an arm of the United States government and his deliberately seeking to utilize the law of the land to prevent third persons from interfering with his trade relations.

It was this basic distinction, implicit throughout the cases, which the lower courts erroneously failed to recognize.

In addition to misapplying and misconstruing *Benz, Incres* and *Sociedad,* the decisions of the courts below are in direct conflict with two other decisions of this Court. Thus, this Court has established beyond any question that the existence of a secondary boycott gives rise to remedies under Federal labor legislation irrespective of whether the National Labor Relations Board has jurisdiction over the parties and without regard to whether the Labor Act applies to the party seeking relief. In *I. B. T. v. New York, New Haven & Hartford RR. Co.,* 350 U. S. 155, 100 L. ed. 166 (1956), it was held that the railroad, although specifically exempt from the coverage of the Labor Act, was nonetheless entitled to remedy under that Act for illegal secondary boycott activities of the defendant union.[11] In

11. The *Incres* court (372 U. S. 24, 27, 9 L. ed. 2d 557, 560) affirmed *I. B. T. v. New York, New Haven & Hartford R. R. Co.,* and Justice Douglas relied upon *New Haven* when, in his dissenting opinion in *Benz,* he pointed out that a foreign flag operator could obtain relief under Section 303(b) even though the Act had no application to his internal employer-employee relations. 353 U. S. 138, 148, 1 L. ed. 2d 709, 716.

Plumbers' Union v. Door County, 359 U. S. 354, 3 L. ed. 2d 872 (1959), the Supreme Court came to the same conclusion in the case of a political subdivision, also specifically exempted from the coverage of the Act.[12]

Hence, it is without question the law of the land that an employer that has been subjected to illegal secondary boycott union activity need not be amenable to Board jurisdiction or, indeed, covered by the Act at all in order for the remedial provisions of the Act to be brought into play. This having been established, it would be entirely inconsistent with the purpose of the remedial provisions of Section 303(b) to carve out an exception for foreign flag vessels.

As a consequence of the misconception by the Court of Appeals of the scope of *Benz, Incres* and *Sociedad,* and because its decision runs directly counter to the decisions of this Court in the *New Haven Railroad* and *Door County* cases, certiorari should be granted to correct and thereby make certain the law in this important area of our nation's foreign commerce.

3. The Decision of the United States Court of Appeals for the Third Circuit Is in Conflict With the Decision of the United States Court of Appeals for the Seventh Circuit in Madden v. Longshoremen, 334 F. 2d 1014 (1964) Cert. Den. 379 U. S. 967, 13 L. ed. 2d 560 (1965), and That of the United States Court of Appeals for the Fourth Circuit in N. L. R. B. v. I. L. A., 332 F. 2d 992 (1964).

In *Madden v. Longshoremen,* 334 F. 2d 1014 (1964) cert. den. 379 U. S. 967, 13 L. ed. 2d 560 (1965), a decision

12. The decision here appealed from is also in conflict with the Third Circuit Court's own prior decision in *NLRB v. Local No. 313,* 254 F. 2d 221 (3rd Cir. 1958) where it held that a political subdivision, although not subject to the Act, was entitled to a remedy thereunder where an illegal secondary boycott was involved. While this case was pointed out to the lower court, it made no reference to its earlier decision in its *per curiam* disposition of the issue now sought to be reviewed.

of the United States Court of Appeals for the Seventh Circuit, the union disrupted business relationships between an American employer and a foreign vessel employing foreign seamen then in an American port. As in the case at bar, there was no internal dispute between the foreign owners of the vessel and its alien crew. The Court held that a violation of the secondary boycott provisions of the Act was made out and despite the lack of jurisdiction of the Board over the internal labor relations of the foreign vessel, the court accorded to the Board the jurisdiction to seek an injunction against such secondary boycott activity. The Court pointed out:

> "In the case at bar, no attempt is being made to regulate or to apply the Act to the 'internal management or affairs' of the [foreign] ships; the injunction does not regulate internal affairs of its ship. No conflict between American and Canadian policies can result from halting an illegal secondary boycott in this country, directed against an American employer by an American labor organization and involving employees working in a domestic plant of the American employer." 334 F. 2d 1014, 1019.

In *N. L. R. B. v. I. L. A.*, 332 F. 2d 992 (1964), the United States Court of Appeals for the Fourth Circuit had before it an appeal involving substantially similar facts. In October, 1962, at the height of the Cuban missile crisis, the I. L. A. made public a policy of not loading ships, American or foreign, that were trading or had traded with Cuba. One such ship was the "Tulse Hill," a British flag vessel owned by Ocean Shipping Service Ltd., a Bermuda corporation (Ocean). Upon arrival in Baltimore, the longshoremen refused to service the vessel and Ocean (the foreign flag owner) filed secondary boycott charges with the NLRB alleging disruption of business dealings with Maryland Ship Ceiling, a company engaged in fitting out vessels to receive cargo. The NLRB sought injunctive relief which the lower court granted, holding that although

one party affected by the boycott was the alien owner of a foreign flag ship, an illegal secondary boycott proscribed by Section 8(b)(4) of the Act may nonetheless be found. It stated (sub nom. *Penello v. Longshoremen,* 227 F. Supp. 164 (D. Md. 1964) at pages 169-70):

> "It is true that a 'secondary boycott', prohibited by Section 8(b)(4)(ii)(B), usually involves not only a neutral secondary employer who is threatened, coerced or restrained, but also a primary employer with whom the union has a labor dispute. But the statute and the reported cases make it clear that the primary person involved need not be an employer within the meaning of the Act.
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> "Sec. 8(b)(4)(ii)(B) makes it an unfair labor practice for a labor organization or its agents to threaten, coerce or restrain any person engaged in commerce *or in an industry affecting commerce* where an object thereof is forcing or requiring any person (i.e. Maryland Ship Ceiling) to cease doing business with 'any other person'. Broader language can scarcely be imagined. Ocean is certainly another person.
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> "The decisions likewise hold that such 'other person' need not be an employer covered by the Act. (citing *I. R. T. v. New York, New Haven & Hartford R. R. Co., supra; Plumbers' Union v. Door County, supra; N. L. R. B. v. Washington-Oregon Shingle Weavers,* 211 F. 2d 149 (9th Cir. 1954)."

The Court of Appeals reversed the lower court's order on the dual grounds that (1) the activities of the union constituted political rather than labor activity [13] and (2) no finding of secondary boycott within the meaning of Section 8(b)(4) of the Act could be justified by the facts of the case.

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13. Strikes which are political activity rather than labor activity have long been held to be outside the ambit of the Act: See *NLRB v. Bretz Fuel Co.,* 210 F. 2d 332 (4th Cir. 1954).

But most importantly for our purposes, the Court of Appeals dismissed the union's contention that Board jurisdiction was ousted by the decisions of this Court in *Benz, Incres* and *Sociedad, supra,* with the following pertinent language (332 F. 2d at page 995):

> "The union has argued that the Board lacks jurisdiction over the subject matter. It is said first that because the 'Tulse Hill' is a foreign-flag vessel manned by an alien crew and because her owner, Ocean, seeks to invoke the Board's aid, this controversy is not one 'affecting commerce' within the meaning of the Act. We do not accept this broad proposition. In *McCulloch v. Sociedad Nacional de Marineros de Honduras,* 372 U. S. 10, 83, S. Ct. 671, 9 L. Ed. 2d 547 (1963); *Incres S.S. Co. v. International Maritime Workers,* 372 U. S. 24, 83 S. Ct. 611, 9 L. Ed. 2d 557 (1963); and *Benz v. Compania Naviera Hidalgo, S. A.,* 353 U. S. 138, 77 S. Ct. 699, 1 L. Ed. 2d 709 (1957), the cases relied upon for this purpose by ILA, the Supreme Court declared the Board without jurisdiction over labor relations between owners of foreign-flag vessels and their crews. *These cases all relate to ship-board labor relations, something very different from the present case.*" (Emphasis supplied.)

It is manifest that the Fourth and Seventh Circuits were persuaded that the LMRA applied to secondary boycotts involving foreign flag vessels, and that the owners of such vessels are entitled to the remedies provided by that Act for relief from the unions' illegal secondary boycott activities.

So here, insomuch as the activities of respondents were plainly prohibited by Section 8(b)(4) of the Act, it is altogether inconsistent with *Madden* and *NLRB v. I. L. A.* to deny to petitioners the remedial relief afforded by Section 303(b) of the Act where it is clear that such relief will not interfere with or regulate the internal management or affairs of petitioners' vessels, but will

merely grant to the petitioners the right to apply for relief in damages parallel with the right to obtain injunctive relief through the NLRB as approved by the courts in these cases.

The Court is therefore urged to grant certiorari in order to prevent a real and embarrassing conflict of opinion and authority between the Court of Appeal of the Third Circuit in this case and that of the Fourth and Seventh Circuits in the cases just cited.

4. The Decision of the United States Court of Appeals for the Third Circuit Denying to the Owners of Foreign Flag Vessels Who Have Been Injured by Illegal Secondary Boycott Activity of American Unions in an American Port the Right to Recover Damages Under Section 303 of the Act Not Only Conflicts With the Express Language of the Act as Well as With Its Purpose, But Also Contravenes and Impedes Vital National Defense and Foreign Relations Policies Which Seek to Further and Promote the Existence and Maintenance of Foreign Flag Vessels Subject to Effective American Control in Time of National Emergency, and Will Inevitably Have Significantly Harmful Effects Upon a Substantial Segment of the Foreign Commerce of the United States.

Section 303(b) provides a remedy for "*whoever* shall be injured in his business or property by any violation of . . ." the proscription against secondary boycott activity. For purposes of the motions upon which the lower court dismissed petitioners' actions, the defendants may be regarded as conceding that the picketing complained of constituted secondary boycott activity.

It is apparent from a study of *Benz, Incres* and *Sociedad* that the conclusions there reached stemmed primarily from considerations of public policy relating to international affairs and, as a consequence, judicial reluctance

to accord to the N. L. R. B. jurisdiction over foreign flag vessels is limited exclusively to disputes involving the internal labor affairs of such vessels.

On the other hand, there should be no such judicial reluctance to afford the remedy conferred under Section 303(b) to the owners of foreign vessels subjected to illegal secondary boycott activities by American unions in American ports. At the outset, no involuntary interference with the affairs of foreign nationals will result. Accordingly, there is here no danger of conflict between two sets of laws, or of retaliatory action by a foreign nation, dangers which were apprehended by this Court in *Sociedad, supra,* and which impelled the Court to decide the case as it did.[14]

Moreover, the United States Government has made it altogether clear that one of the basic tenets of its system of national defense rests upon the maintenance of a fleet of vessels registered under the laws of Panama, Liberia and Honduras, but which, because beneficially controlled by United States interests, are under the effective control of

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14. "Therefore, we find no basis for a construction which would exert United States jurisdiction over and apply its laws to the internal management and affairs of the vessels here flying the Honduran flag, contrary to the recognition long afforded them not only by our State Department but also by Congress. In addition, our attention is called to the well-established rule of international law that the law of the flag state ordinarily governs the internal affairs of a ship. See *Wildenhus's Case, supra,* at 12; Colombos, The International Law of the Sea (3d rev. ed. 1954), 222-223. The possibility of international discord cannot therefore be gainsaid. Especially is this true on account of the concurrent application of the Act and the Honduran Labor Code that would result with our approval of jurisdiction. Sociedad, currently the exclusive bargaining agent of Empresa under Honduran law, would have a head-on collision with NMU should it become the exclusive bargaining agent under the Act. This would be aggravated by the fact that under Honduran Law NMU is prohibited from representing the seamen on Honduran flagships even in the absence of a recognized bargaining agent. Thus even though Sociedad withdrew from such an intramural labor fight—a highly unlikely circumstance—questions of such international import would remain as to invite retaliatory action from other nations as well as Honduras." 372 U. S. 10, 20, 21, 9 L. ed. 2d 547, 554, 555.

the United States and will, in time of war or national emergency, become forthwith available to the United States when needed [15] (47a).

The Secretary of Defense has made it plain that continued harassment of these vessels by illegal union activities may well impel their owners to transfer registry to flags of European nations, under which they will not be the target for union activities, but in circumstances where they will no longer be subject to effective U. S. control in time of national emergency: See Appendix D, *infra*, page 48.

To conclude that the United States intended to permit the owners or operators of such vessels (of which the SS ORE MONARCH is a prime example) to be subjected to harassment in American ports by secondary boycott activities rendered illegal by Section 8(b)(4) of the N. L. R. A. without being able to avail themselves of the clear remedy afforded by the very Act which renders such conduct illegal, therefore, has no basis in logic or policy, and, indeed, runs directly counter to the important U. S. policies just described.

And it will not do to answer this argument by relegating such vessel owners to the uncertain benefits that may accrue from state common law or statutory remedies, as the District Court here suggests (see Appendix B, *infra*, at pages 37 and 43). The laws of each of the fifty states may or may not provide adequate relief in such circumstances. The uncertain nature of common law remedies in these situations is graphically illustrated by the fact that some of

15. See Extension of remarks by Hon. Carl Vinson, Chairman of House of Representatives Committee on Armed Services, August 28, 1961, setting forth correspondence on this subject between Hon. Roswell L. Gilpatric, Deputy Secretary of Defense, and Representative Vinson. Congressional Record Appendix, August 28, 1961, A 6713-6714. A copy of this reference is attached hereto as Appendix E for the Court's convenience. See also opening statement of Under Secretary of State C. Douglas Dillon at the Intergovernmental Shipping Talks, June 8-12, 1959. 41 DEP'T STATE BULL. (No. 1045) 10-15 (July 6, 1959), and letter to the Attorney General from the Secretary of Defense, dated October 26, 1960, printed as Appendix D hereto, *infra*, at page 48.

these same respondents, in *Madison Shipping Company v. NMU, et al.*, E. D. Pa. Civil Action No. 27557, filed a brief and argued at length that foreign vessel owners employing alien seamen are without remedy in such situations under common law, statute, treaty or otherwise.

There is, on the other hand, a uniform Federal policy, equally applicable in every state, that secondary boycott activities are illegal, and there is a uniform remedy granted under Federal law against such activities. No surer way could be found to frustrate National policy than for the courts to impute to Congress the intent to deny to foreign flag vessel owners and operators the right voluntarily to seek a Federal remedy in a Federal court when subjected to Federally-proscribed boycott activity.

Finally, Congress clearly stated that, once it made secondary boycotts a Federal offense, "whoever" was damaged by such conduct might find relief under Section 303(b) of the Act. To deny to a vital segment of our country's foreign commerce the right to relief under that Section will, of a certainty, encourage unions to persist in manifestly illegal activities, as the record here clearly shows they fully intend to do (47a-48a, 52a), and thereby flout the public policy clearly enunciated by Section 8(b)(4) of the Act.

That the United States regards interference with the operation of such foreign flag vessels by union secondary boycott activities as highly undesirable as well as illegal, and hence subject to certain remedial provisions of the N. L. R. A. is made explicitly clear by the Government's brief as amicus curiae in *Madden v. Longshoremen, supra*, where it said:

> "Since the United States participated as *amicus curiae* in the so-called *Foreign Flag Cases* [*Incres* and *Sociedad*] before the Supreme Court of the United States for the purpose of asserting its concern about the impact of that question upon the national defense and international relations, we deem it important to ad-

vise this Court of the reasons for distinguishing those cases from the present controversy and urging that the present controversy *is* within the jurisdiction of the National Labor Relations Board. See Point II, below.

* * *

"The issue in the *Sociedad* case was 'Whether the Act *extends to the crews'* of 'foreign-flag ships employing alien seamen' which are beneficially owned by an American corporation (372 U. S. 10, 12-13, emphasis added). More particularly, the question was whether the Board had jurisdiction to direct a representation election among the Honduran crew members of ships, owned by a Honduran subsidiary of an American corporation, which flew the Honduran flag and operated between Honduras and the United States. In holding that the Act does not apply to such ships, the Court stated (p. 20) that it found no basis in either the language or legislative history 'for a construction which would exert United States jurisdiction over and apply its laws to the internal management and affairs of the vessels here flying the Honduran flag. . . .' It pointed out (p. 21) that the labor laws of Honduras were applicable to labor relations aboard these vessels, and it stressed (*ibid.*) the danger of conflict between two sets of laws and the risk of 'retaliatory action' by Honduras if the National Labor Relations Act were applied to the vessels. In the companion *Incres* case, the Court held, on the authority of *Sociedad,* that the Act did not apply to the foreign-flag ships there involved, and that the State court therefore was not ousted of jurisdiction to enjoin primary picketing of such vessels by an American union seeking to organize their crews.

"In the present case, however, there is no attempt to apply the Act to the 'internal management and affairs' of the foreign-flag vessel. The alleged unfair labor practice in no way involves the relationship

between the vessel and its crew; it involves only the relationship between an American employer and his American employees with respect to actions taken at its place of business in the United States. No issue between Upper Lakes Shipping and its employees or any union seeking to represent them is drawn in question. The secondary action of which the petition complains is illegal regardless of the merits or legal status of any controversy involving Upper Lakes Shipping or Canadian Labor unions. No conflict between American and Canadian law or American and Canadian policy can possibly result from enjoining the American unions from applying secondary pressure against an American employer, with whom it has no labor dispute, in order to induce that employer to cease dealing with a Canadian firm. *On the contrary, as we have shown above, it is the application of such pressure, and not its prohibition, which poses a serious threat to the amity of relations between the United States and Canada.*" (Emphasis supplied.)

It will be readily observed that the desirability of enjoining illegal boycott activity by Board action, as urged upon the court by the United States government in *Madden*, is equally applicable to affording a private civil remedy to Navios and Universe under Section 303(b) in order to accomplish precisely the same result: the inhibition of such illegal activities in the future, thereby tending to eliminate threats to the amity of relations between the United States and the states of Panama, Liberia and Honduras.

Moreover, there can be no question that appellants Navios and Universe fully meet the qualifications set forth in Section 303(b), having been clearly injured in their business and property. Called upon to construe that section in a restrictive manner, the Court of Appeals for the Sixth Circuit stated that "the word 'whoever' has a plain, unambiguous meaning which we are not authorized to disregard. . . ." It went on to say:

> "The secondary boycott was not illegal under the National Labor Relations Act as originally enacted . . . but Congress made it illegal by the enactment of the Labor Management Relations Act of 1947. In doing so it used the broad and inclusive language of 'whoever shall be injured'. The legislative history shows that Congress was aware of the broad coverage provided by this phrase. . . . If it had intended to limit the right of action to innocent third party employers, it could easily have done so. If Congress considered the use of the secondary boycott in a labor dispute as unfair labor practice and illegal, as it did by the enactment of the Labor Management Relations Act of 1947, *it was entirely consistent with such decision to give a right of action to anyone who was injured in his business by a violation of the law thereafter.*" *United Brick and Clay Workers v. Deena Artware,* 198 F. 2d 637, 644 (6th Cir. 1952), cert. den. 344 U. S. 897, 97 L. ed. 694 (1952), rehearing denied, 344 U. S. 919, 97 L. ed. 708 (1953). (Emphasis supplied.)

It is particularly significant that Congress, in formulating the Section 303(b) remedy, did not limit its availability to an "employer" subject to the Act but utilized instead a term of broadest possible application: "whoever".

It is thus altogether clear that the decisions of the lower courts in this litigation run counter to and interfere with and obstruct the public policy of the United States in the conduct of its national defense as well as in the field of its international relations, and that there is no warrant in the language of the statute to deny to foreign flag vessels the salutary remedial relief afforded by Section 303(b) of the Act. For these additional special and important reasons, therefore, this Court should grant certiorari in order to prevent an unwarranted interference with the policies enunciated by the executive branch of the federal government in these important areas.

CONCLUSION.

The dismissal of the complaints by the District Court and the affirmance of that dismissal by the Court of Appeals presents an important federal issue which this Court has never had an opportunity to clarify, in an area that involves grave consequences to the federal government in the conduct of the national defense as well as the conduct of its affairs with other nations. Moreover, the decision of the Court of Appeals decides the question in a way which seems clearly to misapply or to conflict with prior applicable decisions of this Court, as well as with the decisions of two sister Courts of Appeals. The national interests presented by this litigation and the magnitude of the economic interests involved are clear and reinforce the important legal issues presented as reasons for granting the writ. For all of the foregoing special and important reasons, therefore, this petition for a writ of certiorari should be granted.

Respectfully submitted,

RICHARD H. ELLIOTT,
W. CHARLES HOGG, JR.,
SAMUEL B. FORTENBAUGH, JR.,
CLARK, LADNER, FORTENBAUGH,
& YOUNG,

WENDELL W. LANG,

WILLIAM J. ROSENTHAL,
EARLE K. SHAWE,
Counsel for Petitioners.

APPENDIX A.

Opinion of the United States Court of Appeals for the Third Circuit.

(Filed May 2, 1966)

PER CURIAM.

These appeals are civil actions for damages under Section 303 of the Labor Management Relations Act of 1947, as amended 29 U. S. C. § 187. Plaintiffs-appellants are foreign flag steamship companies. The claims arise out of the concerted picketing campaign on the part of the Union to organize the alien seamen employed by appellants.

Judge Wood in the district court held that the Act does not apply to these suits which allege damages by foreign owned and operated ships resulting from picketing by respondent. He concluded "* * * that Congress intended the L. M. R. A. to provide a statutory remedy for American concerns and American unions only, in their labor disputes." We fully agree with that decision. Benz v. Compania Naviera Hidalgo, 357 U. S. 138 (1957). McCulloch v. Sociedad Nacional, 372 U. S. 10 (1962); Incres Steamship Co. Ltd. v. International Maritime Workers Union, 372 U. S. 24, 27 (1962).

The judgments of the district court will be affirmed.

APPENDIX B.

Opinion and Order of the United States District Court for the Eastern District of Pennsylvania.

WOOD, *J.* December 16, 1964

The defendant Unions, and their individual personal representatives, have filed motions for summary judgment in these consolidated actions. These motions controvert our statutory jurisdiction under Sections 301 and 303 of the Labor Management Relations Act, 29 U. S. C. A. §§ 185 and 187. Also under attack is our federal jurisdiction of certain common law actions, and various claims for punitive damages and counsel fees.

In *limine* we are confronted with a threshold procedural problem which may seem technical, but nevertheless must be resolved. A motion for summary judgment is improper when matters in abatement such as lack of jurisdiction are advanced. It is not a substitute for a motion to dismiss, because if the court lacks jurisdiction it cannot render a judgment, but must enter an order dismissing the action *without prejudice*. *Thompson v. United States,* 291 F. 2d 67, 68 (10 Cir. 1961). "But since the label attached to a motion is unimportant, a motion for summary judgment for lack of jurisdiction over the subject matter may be treated and disposed of as a motion to dismiss." 6 Moore's Fed. Prac. par. 56.03, p. 2027 (2 ed. 1953).

Although lack of jurisdiction is the primary ground asserted in the motions, we have also considered, as a basis for our decision, whether or not certain of these actions state a claim upon which relief can be granted. On this latter theory several of our rulings operate on the merits.

With the intention of making an orderly disposition of these motions, we will make a summary statement of the facts which will generally apply to all of the cases involved. Where necessary, such facts will be amplified in dealing with each individual action.

Statement of the Facts.

From October 21, 1960, until March 15, 1961, the defendants engaged in picketing of the "Ore Monarch," a Liberian vessel owned by Universe Tankships, Inc. (Universe), a Liberian corporation, with its principal place of business in Bermuda. This foreign flag vessel was chartered by Navios Corporation (Navios), a Liberian corporation, with its principal place of business in Nassau, the British West Indies.

The vessel in question was flying the Liberian flag and employed alien seamen when it arrived at Pier 122 in South Philadelphia with a load of iron ore from Venezuela.

The ship was met by a picket boat bearing signs protesting the substandard wages and working conditions allegedly prevailing on the ship. These signs bore the legend of the defendant Union, International Maritime Workers Union (I. M. W. U.).

After the vessel was docked it was not permitted to undock. The picket boat also prevented the tugboat companies, P. F. Martin, Inc. (Martin) and Curtis Bay Towing Company of Pennsylvania (Curtis) from undocking other Universe and Navios vessels in addition to the "Ore Monarch."

In order to make their picketing more effective, officials of the I. M. W. U., N. M. U., Seafarers' International Union (S. I. U.) and the International Longshoremen's Association (I. L. A.) prevailed upon employees of the Pennsylvania Tidewater Dock Company (Tidewater) to refrain from unloading Universe and Navios ships. Pickets were posted at the boundary of Tidewater's property, and this prevented further unloading. This action thereby deprived the Pennsylvania Railroad Company (Railroad) of revenues it normally would have received from shipping the cargo after it was unloaded by Tidewater. The Railroad also owned the unloading facilities operated by Tidewater pursuant to a contract between the parties.

The object of this labor activity was a concerted campaign on the part of N. M. U. and S. I. U. to organize the alien seamen employed by Universe and Navios. All of the plaintiffs seek damages from the defendants for the losses they sustained by reason of this picketing and interference with their business and contractual relationships with labor unions, customers, suppliers and others.

Navios and Universe Actions,
Civil Actions Nos. 29757 - 29758.

The Complaints in each of these two actions plead a claim under § 303 of the L. M. R. A. as the source of the Court's jurisdiction. No other cause of action is asserted.

Only the N. M. U.'s motion is directed at these foreign shipowners. The thrust of the motion is that both claims should be dismissed "as the activities of foreign-flag vessels are not in 'commerce' " as defined in the L. M. R. A. 29 U. S. C. A. § 152(6).

It is the opinion of the Court that these two actions are governed by the decision of the United States Supreme Court in *Benz v. Compania Naviera Hidalgo,* 353 U. S. 138 (1957). This case held that the L. M. R. A. does not apply to a suit alleging damages by a foreign owned and operated ship for losses resulting from picketing, even though three American Unions participated in such picketing in an American port.[1] The basis of this holding is that Congress intended the L. M. R. A. to provide a statutory remedy for *American* concerns and *American* unions only, in their labor disputes.

The Supreme Court affirmed the Court of Appeals holding that the provisions of the L. M. R. A. did not

1. The *Benz* case was relied upon by the Supreme Court in two subsequent cases: *McCulloch v. Sociedad Nacional,* 372 U. S. 10 (1962) and *Incres Steamship Co., Ltd., v. International Maritime Workers Union,* 372 U. S. 24, 27 (1962). In *Incres* the Court held that the "maritime operations of foreign-flag ships employing alien seamen are not in 'commerce' within the meaning of § 2(6), 29 U. S. C. § 152(6)."

provide a foreign shipowner with a *federal statutory* remedy. However, the Supreme Court also affirmed the foreign plaintiff's recovery of damages under *common law* principles in accordance with the applicable state law.

Therefore, while we must dismiss the complaints in both of these actions which are bottomed on § 303 of the L. M. R. A., such dismissal is without prejudice to the plaintiffs' right to file amended pleadings asserting their claims under the common law or any other theories which they may deem applicable.[2]

Curtis and Martin Actions,
Civil Actions Nos. 29758 and 29759.

Curtis and Martin are *American* tugboat companies employing *American* seamen that perform tugboat services for the plaintiffs in the Philadelphia area. Both of these plaintiffs have filed two causes of action under § 303 and § 301 of the L. M. R. A. 29 U. S. C. A. §§ 187, 185. The claim under § 303 seeks damages for losses resulting from the picketing which was allegedly intended to force the plaintiffs to cease doing business with the foreign shipping companies and Norton-Lilly Co., Inc., an American concern.[3]

The second cause of action under § 301 seeks damages for the alleged interference by the defendant Unions with existing collective bargaining contracts which Curtis and Martin had with certain other local unions not parties to these actions. It is alleged that this interference induced the plaintiffs' employees to engage in work stoppages thus violating their collective bargaining agreements.

The defendant N. M. U. contends the first cause of action under § 303 should be dismissed for lack of juris-

2. These *foreign shipowners* not being subject to the jurisdiction of the L. M. R. A. have the right to proceed as in an ordinary civil suit.

3. Norton-Lilly Co., Inc., represents the foreign shipping companies and engages the tugboat companies to perform services in relation to the foreign vessels involved.

diction because the labor dispute centers around the maritime activities of foreign ships employing alien seamen which are not in commerce under § 152(6) of the L. M. R. A.

We find this position to be untenable. The mere fact that the defendants' main dispute was directed at persons not subject to the jurisdiction of the L. M. R. A. does not automatically disqualify these *American* concerns from the protections of the Act. It cannot be gainsaid that the activities of Curtis and Martin, both American concerns, affect commerce within the meaning of § 152(6). Also, the secondary boycott giving rise to these lawsuits is certainly a dispute between *American* employers and *American* unions and comes within the purview of § 303. *Benz v. Compania Naviera Hidalgo,* supra, footnote 5. See *Madden v. Grain Elevator Workers, I. L. A., Local 418,* 334 F. 2d 1014, 1019 (7 Cir. 1964). The jurisdictional infirmity which precludes the foreign shipowners from bringing suit under § 303 does not vitiate these actions by *American* concerns. Turning now to the second cause of action under § 301 of the L. M. R. A., 29 U. S. C. A. 185. The S. I. U. as well as the N. M. U. seek dismissal of this claim. Two years ago, the S. I. U. made a similar motion to dismiss which was denied by our learned colleague, Judge Van Dusen, as reported in 206 F. Supp. 741 (E. D. Pa. 1962). In the course of his opinion, Judge Van Dusen stated the following at p. 743:

> "Section 301 enables unions to sue and be sued for violation of contract. The present plaintiffs have no contract with any of the defendants." * * *
>
> "These allegations do not assert violation of a contract to which defendants are a party, but rather sound in tort for recovery for inducing breach of contract or interfering with business relationships. Although the question is not free from doubt, the undersigned concludes that the second cause of action is not the type contemplated by the legislators who enacted § 301 and cannot be sustained under that section." (Citing cases.)

Although Judge Van Dusen held that no statutory claim had been made out, he upheld the second cause of action on common law principles and pendent jurisdiction.

The defendants assert that the law has been clarified by the United States Supreme Court in the recent decision, *Local 20, Teamsters, etc. Union v. Morton,* 377 U. S. 252 (1964). In this case the Supreme Court held that state law has been displaced by § 303 in private damage actions based on peaceful union secondary activities. Mr. Justice Stewart, speaking for the Court, stated the following at p. 257:

> "We disagree with the Court of Appeals that this question can be resolved either by reference to the doctrine of pendent jurisdiction or by reference to the line of precedents which have permitted state law to be applied in situations where union activities involving violence were present."

In an attempt to overcome this lucid statement of the law, the plaintiffs contend that their second cause of action should be retained on general principles of federal maritime law. They seek to restrict the Supreme Court's holding in *Morton* to its facts which concerned a *land based* claim bottomed on state law.

We reject this shortsighted interpretation of the law as being contrary to Congress' announced national labor policy. When Congress enacted § 303 it did so with the expressed intention of creating a balance of power between labor and management. If there exists any such federal maritime law which would upset this balance of power by making the same conduct regulated by § 303 also actionable under federal maritime principles, then it too must bow to the supremacy of federal statutory law. "In short, this is an area 'of judicial decision within which the policy of the law is so dominated by the sweep of federal statutes that legal relations which they affect must be deemed *governed by federal law having its source in those statutes,* rather than by local law.'" *Local 20, Teamsters, etc. Union v. Morton,* supra, p. 261 (emphasis supplied).

We therefore hold that the cause of action under § 301 must be dismissed for failure to state a claim upon which relief can be granted.[4] This disposition leaves only the § 303 claim remaining in both suits. With regard to the plaintiffs' actions under § 303—their particular claims for punitive damages and counsel fees are likewise dismissed since § 303 only permits the recovery of compensatory damages.[5]

Railroad and Tidewater Actions, Civil Actions Nos. 29761 and 29762.

The Railroad has filed its only action under § 303 seeking damages for revenue lost when the defendants' picketing prevented Tidewater from unloading the ships and then loading the ore into the Railroad's freight cars for later shipment. The Railroad owns the unloading facilities and would have received an additional 20 cents per ton from Tidewater for each ton of ore unloaded from the vessels. Punitive damages and attorneys' fees are also sought.

A previous motion to dismiss by the S. I. U. was denied by Judge Van Dusen in 1962. 206 F. Supp. 797 (E. D. Pa. 1962). In that motion the S. I. U. contended that the secondary activity was directed at Tidewater and not the Railroad, and therefore was not actionable. The Court held that the relationship between the Railroad and Tidewater was not too remote as to bar recovery under federal law.

The present motion is made by the N. M. U. It asserts the same arguments advanced in the other cases; namely, that since the labor dispute centers around the maritime

4. *Atkinson v. Sinclair Refining Co.*, 370 U. S. 238 (1962).

5. "Punitive damages for violations of § 303 conflict with the congressional judgment, reflected both in the language of the federal statute and in its legislative history, that recovery for an employer's business losses caused by a union's peaceful secondary activities proscribed by § 303 should be limited to actual, compensatory business damages." *Local 20, Teamsters, etc. Union v. Morton, supra*, p. 260. (Also see footnote 16 on p. 260 concerning counsel fees as being non-recoverable).

activities of foreign ships which are not in commerce there does not exist any *statutory* jurisdiction under § 303.

We find the Railroad's activity to be within the commerce definition of the Act and that its right of action is unaffected by the jurisdictional defects present in the Navios and Universe controversies. The claims for punitive damages and counsel fees are dismissed for the same reasons previously enumerated in the *Curtis* and *Martin* actions.

The Tidewater suit presents two causes of action, the first is pleaded under § 303, and the second *purports* to assert a "common law diversity claim" against the *individual representatives* of the defendant unions. This *second claim* was subject to a prior motion to dismiss by the S. I. U. and one of the individual union representatives. 206 F. Supp. 764 (E. D. Pa. 1962). Judge Van Dusen granted the motion as to the defendant Cardullo "without prejudice to the right of plaintiff to file an amendment to the Complaint, making a claim against him as an individual only and not as a representative of a labor organization if the facts permit such amendment." (see p. 766).

Our examination of the record reveals no such amendment as having been filed.

The present motion is filed by the N. M. U., I. L. A., I. M. W. U., Richard Askew, Louis Parise and Shannon J. Wall. The motion is directed at the § 303 cause of action and the common law cause of action.

For the identical reasons previously expressed, the motion attacking the § 303 cause of action for compensatory damages is denied, but such motion is granted insofar as the various claims for punitive damages and counsel fees are pleaded under § 303.

The "common law" cause of action is based on the same conduct alleged in the § 303 claim. We note that Tidewater incorporates paragraphs 3 to 13 inclusive of the first cause of action into the second claim. Paragraphs 4 through 8 name the Unions as defendants and are in-

corporated by paragraph 17. As to these union defendants there is no jurisdiction on common law principles to award damages under state law. *Teamsters, etc. Union v. Morton,* supra.

The plaintiff argues in its brief that the second cause of action is directed only at the individual defendants named: Askew, Wall, and Parise under the common law of Pennsylvania. However, as we read the Complaint each of these defendants is named in paragraphs 18, 19 and 21 as either an officer or responsible representative of the defendant unions. Proof of the second claim will depend upon the establishment of the Unions' liability under the § 303 claim. If these individual defendants are found liable, it will automatically make the unions liable since under § 301(b) a union is liable for the acts of its agents. *Atkinson v. Sinclair Refining Co.*, 370 U. S. 238 (1962). Both of these claims are inextricably intertwined.

To require individual union officers to respond in damages for their *authorized*[6] acts, done on behalf of the union, under any theory of state law would be contrary to the national labor policy. For these reasons Tidewater's second action is governed by the N. L. R. A. and must be dismissed for failure to state a claim upon which relief can be granted.[7] *Atkinson v. Sinclair,* supra, p. 249.

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6. There is no allegation that these union officers were acting in an *unauthorized* capacity.

7. Such a determination operates as an adjudication on the merits. *Bell v. Hood,* 327 U. S. 678, 682, 683 (1946).

Order.

AND NOW, this 16th day of December, 1964, in Civil Actions Nos. 29757 and 29758 the defendants' motions to dismiss are granted as to the § 303 cause of action without prejudice to Navios and Universe to file amended Complaints asserting their claims under the common law or any other applicable theories.

IT IS FURTHER ORDERED that in Civil Actions Nos. 29759, 29760, 29761 and 29672, the defendants' motions to dismiss the § 303 cause of action in each Complaint are denied as to the plaintiffs' respective claims for compensatory damages; but such motions are granted insofar as the claims for *punitive damages and counsel fees* are pleaded under § 303 for failure to state a claim upon which relief can be granted.

IT IS FURTHER ORDERED that in Civil Actions Nos. 29759 and 29760 the defendants' motions to dismiss the second cause of action in each Complaint are granted for failure to state a claim upon which relief can be granted.

IT IS FURTHER ORDERED that in Civil Action No. 29762 the defendants' motion to dismiss the second cause of action is granted for failure to state a claim upon which relief can be granted.

HAROLD K. WOOD, *J.*

APPENDIX C.

Constitution of the United States.

Article I, Section 8, Clause 3.

The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

National Labor Relations Act.

Section 2(6), 61 Stat. 137, 29 U. S. C. § 152(6)

(6) The term "commerce" means trade, traffic, commerce, transportation or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia, or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

Section 2(7), 61 Stat. 137, 29 U. S. C. § 152(7)

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

Section 8(b)(4), 73 Stat. 542 (1960), 29 U. S. C. § 158(b)(4)

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * *

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this section;

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of this title: Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of this title;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather

than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter: Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution.

Labor Management Relations Act, 1947, as Amended.

Section 303, 73 Stat. 545, 29 U. S. C. § 187

(a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 158(b)(4) of this title.

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a)

of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

APPENDIX D.

THE SECRETARY OF DEFENSE,
Washington, October 26, 1960.

DEAR MR. ATTORNEY GENERAL: As you know, the National Labor Relations Board has under consideration four cases involving vessels registered in, and flying the flags of, Honduras, Liberia, or Panama. These are Case Nos. 15-CA-1454 (West India Fruit and Steamship Co., Inc.), 12-CA-255 (Peninsular & Occidental Steamship Co.), 12-RC-415 (Eastern Shipping Corp.), and 2-RC-10379 (United Fruit Company).

The Department of Defense does not take sides in the dispute between labor and management and has only small interest in the future defense utilization of the specific ships involved in the cases before the Board. It is, however, of great importance to the Department of Defense that the Board be cognizant of the defense aspects of ships flying the flags of these foreign nations when decisions are made which might establish broad precedents in this field.

The aggregate amount of tonnage of active United States flag shipping now available is inadequate for most emergency situations and must be augmented by shipping that can be brought under our direct control in the event of emergency. In the event of a national emergency, defense plans envisage the use by the United States of a substantial number of ships flying the flags of Liberia, Panama and Honduras. These ships are considered available for United States usage when required during periods of national emergency because:

a. The ships are registered in countries that either agree to use by the United States for emergency purposes or have no objections to such use and that permit deregistration at the option of the owner;

b. The country of registry has no governmental need for the shipping and no stated intention of emergency requisition; and

c. The owners of the shipping have made agreements with the United States Maritime Administration with respect to availability of the ships to the United States Government in the event of a national emergency.

The size and age of the foreign flag fleet available for United States emergency use is shown here in comparison with the United States Flag Merchant Fleet:

Active privately owned merchant shipping as of 27 September 1960

	U. S. flag ships		*Foreign flag ships available for U. S. emergency use*	
	Number of ships	*Deadweight*	*Number of ships*	*Deadweight*
Tanker	349	6,613,900	279	7,951,500
Cargo	628	6,900,400	175	2,718,300
Passenger/combination	41	358,700	6	28,300

Age of the ships as of 1 July 1960

	U. S. flag ships		*Foreign flag ships available for U. S. emergency use*	
	Number of ships	*Deadweight*	*Number of ships*	*Deadweight*
Built 1955-60	61	1,738,300	144	5,670,000
Built 1947-54	103	1,676,800	69	1,847,600
Built 1947 or before	897	10,840,300	261	3,231,000

The bulk of the newer ships under foreign flags subject to effective United States utilization in the event of a national emergency were built in foreign shipyards and have never flown the American flag. Although their owners have agreed to make these ships available to the United States

in the event of emergency, there are no contractual provisions precluding the transfer of the ships to other registries, and the ships can be moved to other foreign registries if it appears to the owners to be economically expedient to do so. Such movements are normally made to the registries of maritime countries of Europe. Under such registries, these ships would no longer be available for the emergency use of the United States because the laws of the European maritime nations normally prescribe definite plans for requisition by those Governments of the shipping under their flags in the event of emergency. This, of course, will result in complete control of the shipping by these nations under emergency conditions and consequent loss of control over a vital resource by the United States in the event of a national emergency.

The United States now depends on the importation by ships of huge quantities of vital raw materials. For example, more than one-sixth of our total petroleum consumption is imported, most of it by ship. The steel and aluminum industries depend to a great degree upon imported ores. We need to be assured of the control of these shipping lifelines in order to continue the flow of these vital imports in the event of a national emergency. The history of our maritime operations in two world wars and three other periods of emergency shows clearly that in a national emergency we must have the utilization of the maximum tonnage of shipping possible. Our experience in World War II and in the emergencies since that war has demonstrated the practicability and value of the concept of effective United States emergency control of ships other than those registered in the United States.

In my considered judgment, the subjection of these foreign flag vessels to the jurisdiction of the United States Labor Management Relations Act would very likely have the effect of driving them to registration under the flags of other nations. By reason of the high costs of operation of United States flag vessels, there is, in my judgment, no

realistic possibility of such ships being transferred to United States registry.

In view of the importance of this matter to the national defense, it is requested that you intervene in the cases pending before the National Labor Relations Board so as to bring this letter and the considerations set out therein to its attention.

Sincerely,

(Signed) THOMAS S. GATES.

The Honorable The ATTORNEY GENERAL.

APPENDIX E.

Flags of Convenience in National Defense.

CONGRESSIONAL RECORD—APPENDIX
Pages A6713-A6714

EXTENSION OF REMARKS

OF

HON. CARL VINSON

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Monday, August 28, 1961

MR. VINSON. Mr. Speaker, the current maritime strike has as one of its principal issues the question of flags of convenience. I am advised that ships totaling approximately 10 million dead-weight tons have been constructed by private American capital and are now under foreign registry in Panama, Liberia, and Honduras. Such ships are referred to as flags of convenience.

From a standpoint of national defense, these ships can be recovered for our national needs in the event of a national emergency. However, we are facing a situation under which the owners of these tankers and bulk cargo carriers may sell or make an outright transfer of these ships to foreign countries. In that event, the right of recovery of these ships in a national emergency would cease to exist.

Since we do not have, under American registry, sufficient tonnage of this type of ship to meet the requirements of national defense in times of national emergency, it is

both important and urgent that we adopt a national policy which will protect the national interest.

This situation has led to an exchange of correspondence between the Deputy Secretary of Defense, Hon. Roswell Gilpatric, and me. In view of the importance of this matter to the national interest, I feel it both proper and necessary to bring this correspondence to the public attention. The Deputy Secretary has agreed to the necessity and propriety of this course of action.

The exchange of correspondence was as follows:

THE SECRETARY OF DEFENSE,

Washington, August 24, 1961

DEAR MR. CHAIRMAN: I would like to put before you the interest of the Department of Defense in the flags-of-convenience question, one of the issues in the dispute that led to the maritime strike of last spring.

The Taft-Hartley injunction against the continuance of the maritime strike will expire September 20, and if the dispute is not resolved by that time, the strike is likely to be resumed by the west coast unions. If this should happen and the strike should continue, we are advised that some owners of flags-of-convenience vessels may sell the ships to foreign uncontrolled registries.

Because of the effect which such a transfer of tonnage out of U. S. control would have on defense needs in the event of a national emergency, we asked the Secretary of the Navy to review its requirements for flags-of-convenience vessels in the event of war. The Navy has done so and has confirmed its previous position that it is imperative that "U. S. effective control of flags-of-convenience shipping be retained." That position has been adopted as the Defense Department's position in the matter, and the Secretary of State and the Secretary of Labor have been so informed. A complete statement of that position is as follows:

"1. The primary interest of the Department of Defense in flags-of-convenience shipping relates to the impact of our national defense posture and this interest is to insure the availability under U. S. control of as much of this shipping as may be needed in the event of national emergency. The amount of active U. S.-flag shipping now available is inadequate for almost any situation of war or emergency and must be augmented by shipping which can be brought under our direct control as required in the event of an emergency.

"2. It is considered imperative that United States effective control of flags-of-convenience shipping be retained. Further, it is considered that such flags-of-convenience shipping as is covered by agreements or contracts with owners can be brought under our operational control as was done in World War II.

"3. This dependence on effective control of flags-of-convenience shipping for emergency use is an expedient. It would be much more desirable to have adequate U. S.-flag tonnage available. However, this ideal situation does not exist, and until enough U. S.-flag tonnage is available, we will need to rely on flags-of-convenience ships.

"4. Until such time as our national emergency needs can be completely met by modern American-flag shipping, the Department of Defense has no recourse but to support the flags-of-convenience concept. The possible loss of the shipping capability represented by American-owned shipping of Panlibhon registry to uncontrolled registries is of great concern to the Department of Defense."

In view of Defense interest in having available sufficient merchant tonnage for military shipping tonnage in emergency situations we would like to see established a national policy based on the above position, and the Secretary of Labor has informed me that he agrees with this view. Therefore, without taking sides in the current labor-management controversy in the maritime industry, the De-

fense Department intends to do all it can to have its position adopted as national policy.

Believing that you will share our concern in a matter of this importance to U. S. national security, I would appreciate an expression of your own views in this matter.

Sincerely,

ROSWELL L. GILPATRIC,
Deputy Secretary of Defense.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington, D. C., August 25, 1961

HON. ROSWELL GILPATRIC,
Deputy Secretary of Defense,
Washington, D. C.

DEAR MR. SECRETARY: Thank you for your letter of August 24 wherein you outline the interest of the Department of Defense in the flags-of-convenience question, and the possible adverse impact which this question could have upon our national defense capabilities in the event of an emergency.

Inasmuch as the Taft-Hartley injunction will expire on September 20, and none of us can predict developments beyond that date, it is quite obvious that this matter is of the highest importance in defense considerations. By this same token, I deem the prompt adoption of a firm national policy on this matter to be of equal importance.

As you point out, such action is required in the national interest. I want you to know that I fully agree with the national policy position which you propose and urge you to pursue its adoption at the highest levels of government as promptly as possible.

This matter transcends the interests of any individual or group and it is my judgment that our exchange of correspondence on the subject should be made a matter of public record. Accordingly, I propose to insert this correspondence in the Congressional Record and would appreciate your expression as to that proposed course of action.

Sincerely,

CARL VINSON,
Chairman.